Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

NO. 78-1944

MARSHALL I. STEWART VS.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

MARSHALL I. STEWART
646 JASPER STREET
BALTIMORE, MARYLAND
21201
TELEPHONE:
AREA CODE 301 -
225-7778

PETITIONER

PRO SE

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Marshall I. Stewart, appearing pro se, requests that this Honorable Court issue the writ of certiorari and assigns the following information in support.

The Court of Appeals of Maryland on May 31, 1979 reached a decision to disbar the Petitioner in the case of Attorney Grievance Commission of Maryland vs. Marshall I. Stewart; Miscellaneous Docket (Subtitle BV) No. 9. See Appendix No. 1. Petitioner was represented by counsel, but not present, being confined to Veterans Hospital in Baltimore for a coronary, no postponement having granted after request.

The Attorney Grievance Commission of Maryland was created by Order of the Court of Appeals of Maryland dated February 10, 1975; see Maryland Rules of Procedure, Rule BV2. The body will hereinafter be referred to as "Commission". It was intended that it should "supervise and administer the discipline and inactive status of attorneys in accordance with this subtitle".

Despite the good intentions of the State of Maryland in creating this Commission the effect has been at once to deprive the attorney of his substantive and procedural rights guaranteed to him as attorney and as citizen under the laws and statutes of the United States and the State of Maryland. The Commission, after creation, thereupon began advertising heavily through television, newspaper, and other media

Clients were encouraged, almost promoted into filing a claim against an attorney. Moreover they were in a position of threat against the attorney, such as: "if you don't do this, or that, or if you don't return my money I'm going to the Grievance Commission that I hear about over television." This position is not too far removed from blackmail. No last minute conferences to confer or work out differences are specified by the Commission; no requirement of a certified letter to the attorney affording him a chance to answer or to rectify any possible misunderstanding. A complaint is filed and may not be withdrawn.thereafter. Petitioner is informed that one complaint against an attorney of Maryland (not Petitioner) involved a divorce. Attorney obtained the divorce for a female and thereafter

courted her. When the friendship expired a complaint was filed with the Commission alleging professional improprieties and the attorney wasted many months of time in defense.

Indeed, Petitioner experienced a similar situation. He was a passenger in his own car, reading the Sun Newspaper. His automobile was struck from the rear slightly and a complaint from a Winifred Heill to the Commission was filed and honored. It was dismissed by the three-judge panel; nevertheless the complaint is referred to in the opinion of the Court of Appeals of Maryland. A situation of this sort is outrageous and intolerable, and certainly violative of the Fourteenth Amendment to the United States Constitution. See Appendix No. 1 as to complaint of Winifred Heill, No. F.

The three-judge panel compelled counsel for Petitioner to defend the case against Petitioner despite the fact that counsel for Petitioner was in mourning; no postponement was permitted. Counsel entered her appearance and defended the case on the same day.

Petitioner, further, was not afforded a postponement, despite his incapacity of being in the Intensive Care Unit for coronary at the V. A. Hospital; again, no postponement was given, this time by the Court of Appeals of Maryland. Both lack of postponement grants are violative of the 14th Amendment of the U. S. Constitution.

Commission has used, for want of a better term, a "shot-gun approach" against Petitioner which also is violative of the 14th Amendment. In do-

ing this the Commission pooled several cases against Petitioner, of which almost 40% were eliminated before reaching the Court of Appeals. The theory of this approach is that if enough information or complaints are thrown against an individual some of the information or complaints will stick. This results in a concerted plan to win a case rather than to seek justice, thus again violative of the 14th Amendment.

The present set of Rules as to Disciplinary Prodedure were promulgated after the alleged infractions in Petitioner's case and are ex post facto, again violative of the rights and privileges of the 14th Amendment. Under former procedure any complain was heard on an individual basis.

It is submitted that the said Rules of Procedure are clearly unconstitutional in that it does little to protect an attorney against loss of constitutional rights; further, there are no directions or signposts within the Act by which a practicing attorney may be guided. Many attorneys are bewildered by its vague and undirectionalized language. One has to wait until the Court of Appeals of Maryland has ruled upon a matter of disciplinary content to begin to understand what the Rules mean or do not mean or how an individual attorney may protect himself or herself. There has been an illegal delegation of legislative authority as Mr. Chief Justice Hughes stated in A.L.A. Schecter Poultry Corp. vs. United States, 295 U.S. 495; 55 S.Ct. 837. (1935). He stated, "The Congress is not permitted to abdicate or to transfer to others the essential legislative

functions with which it is thus vested".

Petitioner points out that the Court of Appeals of Maryland did not consider Petitioner's large amount of education: almost five degrees from universities including: Bachelor of Science (English), Juris Doctor, from Oklahoma State University and the University of Oklahoma respectively; Master of Patent Law and Doctor of Juridical Science from The George Washington University National Law School Division; Master's degree in accounting, almost completed from The George Washington University. Petitioner has taught various subjects in academics, including business law, at several leading universities in Maryland, also the University of Richmond, (Virginia).

Experience includes: Attorney for Department of Commerce Department of the

Air Force, Base Legal Officer, Shaw Air Force Base, S.C., Summary Court Judge, and practioner of law since Petioner was a very young man.

Honors received include:

Helped revise section of Code of Military Justice.

Wrote a procurement bulletin for the U. S. Air Force; reached grade of Captain in the Air Force.

Contributed to Nortwestern Air Law Journal; article, Civil Air Regulations.

Received Certificate of Honor from Baltimore City Police Department for assistance in preventing threatening riot at Baltimore City Jail, July 1976.

Received WBAL Radio 11 Brotherhood Award, March, 1978.

Presently organizing and writing The Crime Rate Can Be Reduced To One

Third.

Petitioner feels that honor has been brought by him to the Bar of the State of Maryland.

Petitioner quotes from the Court of Appeals decision, page 6; see Appendix No. 1: "Accordingly, a lawyer charged with misconduct is not entitled, at any stage of disciplinary proceedings, to all of the constitutional safeguards accorded an accused in a criminal proceeding," and refers to a series of cases which show the U. S. Supreme Court has never ruled on this point; it merely has refused to issue certiorari.

The Court or Appeals states that a lawyer so charged * * * "is not entitled * * * to all of the constitutional safeguarfd * * *". Which safeguards is he, and which safeguards is he not entitled to? This should be answered once and

for all by this Court. These Commissions have in the last few years been created in all fifty states with many, many important legal questions still by the U. S. Supreme Court to be answered.

This Court must answer the questions: To what extent may a Commission or a Court ignore the laws of evidence, hearsay, self-incrimination, best evidence rule, and other rules, laws of pleading and practice, and other positive rules of law and the safeguards of the United States statutes and Constitution and of the Maryland statutes and Constitution in the name of disciplinary procedure? Petitioner contends he has the same rights as any citizen and further knows in his heart he is right.

To rule otherwise is to case aside laws and the Constitution; that in itself

is unconstitutional. The question will have to be answered by the U. S. Supreme Court sooner or later. Until the date it does the charged attorney is no more than a second class citizen as the black citizen and the female citizen were until a few short years ago.

Petitioner has never been disciplined previously by the State of Maryland yet he received the highest form of punishment, disbarment; early in the proceedings, through his attorney, Petitioner was offered a three months' suspension, which was rejected. The punishment was much too severe.

Petitioner further states that disciplinary proceedings in Maryland should not have considered any action Petitioner in any other juriddiction, i.e. the District bf Columbia.

For the reasons enumerated Petitioner feel that a writ of certiorari should issue.

Respectfully Submitted,

Marshall I. Stewart

Marshall I. Stewart
Petitioner, Pro Se
646 Jasper Street
Baltimore, Maryland
225-7778

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of June, 1979 I mailed three copies to Attorney Grievance Commission of Maryland, District Court, Taylor and Rowe Boulevard, Annapolis, Md. 21401

Marshall I. Stewart

IN THE COURT OF APPESLF OF MARYLAND

Miscellaneous Docket
(Subtitle BV)

No. 9

September Term, 1978

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

v.

MARSHALL I. STEWART

Smith
Digges
Eldridge
Orth
Cole
Davidson,
JJ.

Opinion by Davidson, J.

Filed: May 31, 1979

The Attorney Grievance Commission through Bar Counsel filed a petition for disciplinary action against Marshall I. Stewart (Stewart) alleging violations of the Disciplinary Rules of the Code of Professional Responsibility. Pursuant to Maryland Rule BV9, we referred the matter to the Supreme Bench of Baltimore City to be heard by a three-judge panel. The panel, after giving notice and conducting an evidentiary hearing, made findings of fact from which it concluded that Stewart had violated certain disciplinary rules as charged. It reconnended that he be disbarred. In a memorandum opinion, the panel set forth its findings of fact and its reconnendation as follows:

"FINDINGS OF FACT

"A. Matter of Bryant Millberry Iris O. Ambush). (on complaint of

The allegations regarding this complaint were proven by clear and convincing evidence. In June, 1975, the Respondent undertook to represent Mr. Millberry on his appeal to the Court of Special Appeals of Maryland from his conviction in the Criminal Court of Baltimore City. The Respondent filed the appeal on June 19, 1975, which was dismissed on September 18, 1975 because the record had not been transmitted. The Respondent had notified the court reporter who was at trial, even though he was advised of this by the court reporter at disposition. (Pet.Ex.A.1.d.(1(.). The Respondent made no motion to extend the time for transmitting the record, nor did he undertake to prepare an appeal brief. As a result of the dismissal of the appeal, the client's appeal bond was revoked and he was incarcerated. Subsequently, the Respondent did obtain a belated appeal through post conviction proceedings, but the appeal thereafter was handled by another attorney. The Respondent received $945 of his $1,000 fee, but refused to return any part of it even though requested to do so. (Pet.Ex.A.1.d.(2).)

"B. Settlement of 425 Alabama Road property (on complaint of David Downes). The allegations regarding this complaint were proven by clear and convincing evidence. The Respondent represented the purchaser of this property. At the settlement on May 19, 1975, the Respondent retained from the $45,000 purchase price the sum of $20,993.72 in order to pay off the existing mortgage on the property. The Respondent recorded the deed on June 3, 1975. The Respondent first attempted to pay the mortgagee around July 14, 1975 by sending a check for the mortgage balance that was due on May 19, 1975. The check was returned to the Respondent by the mortgagee's attorney with a letter advising of the interest which had accrued since May 19, 1975 and also advising that foreclosure proceedings would be instituted if full payment were not made by July 18, 1975. The Respondent finally paid the mortgage balance in full on September 12, 1975, four days before the property was to be sold at public auction under the foreclosure proceedings which had since been instututed.

"At all times, the $20,993.72 retained by the Respondent at settlement was on deposit in the Respondent's attorney escrow account. The Respondent did not send the notice required of Section 7-106(b) of the Real Property Article to the seller and purchaser advising of the non-payment of the mortgage.

"After settlement, the seller of the property was denied a subsequent mortgage on another property because of the default in

the mortgage on the subject property occationed by the Respondent's inaction.

"C. Settlement of Laurens Street properties (on complaint of Barnard Dackman). The allegations regarding this complaint were proven by clear and convincing evidence. The Respondent represented the purchaser of these 3 properties. At settlement on October 17, 1975, the Respondent retained the executed deed and sufficient funds to record the deed and the purchase money mortgage executed by the purchaser to the seller. The purchase price was $2500; the mortgage, $1750. The Respondent did not record the deed or mortgage, and on April 6, 1976, the seller's attorney prepared and recorded a new deed and paid for same. The Respondent still has the deed executed at settlement in his file. The Respondent received $700, partly by monies from the purchaser and partly by monies retained at settlement. These sums were to include the Respondent's fee and disbursements he was to make. The Respondent has not refunded or disbursed any of the $700.

(NOTE OF PETITIONER: $737.09 has been refunded. M.I.Stewart)

"D. Divorce of Dolottie Jones on complaint of Mary Carter). The Respondent filed a Bill of Complaint for Divorce a Mensa et Thoro and also appeared with his client's mother at a

criminal proceeding. He received $120, out of which he paid $35 advanced court costs. He did not pursue the divorce case because he was not paid the balance of his $275 fee.

"E. Divorce of Boyd T. Muir. The allegations regarding this complaint were proven by clear and convincing evidence. The Respondent received $300 of his $350 fee and in November, 1974 he filed a Bill of Complaint for an absolute divorce on behalf of his client. Service against the Defendant wife was returned twice 'non est' by December, 1974. Although the Respondent advised his client he would obtain service by posting notice on the court house door, as permitted by the Rules, he failed to do so until after his client had testified before an inquiry panel of the Commission on September 29, 1976. The Respondent had testified before this Court that he had posted such in January, 1976, before his client had complained to the Commission, but retracted this testimony when confronted by the court filed in that case (Resp. Ex.2). The Respondent ultimately concluded the uncontested divorce for his client in January, 1977.

"F. Matter of John Clauss, Jr. (on complaint of Winifred Heil). An employee of the Respondent, John Clauss, Jr., who is not an attorney, was listed in the telephone direc-

tory as an attorney with the Respondent's office address and telephone number. A letter purportedly bearing the Respondent's signature and directed to a local bank states that Mr. Clauss was an 'attorney at law' employed by the Respondent. The Respondent denied any knowledge of the telephone directory listings or the letter to the bank and denies that the signature on the letter is his. The signature on the letter is substantially dissimilar to the Respondent's signature. This panel feels there is insufficient proof to support the Commission's allegations that the Respondent had knowledge of Mr. Clauss' holding himself out as a licensed attorney.

"General comments. The Respondent presented no meaningful explanations for his inaction in these various matters, except for Complaint D. He attempted to excuse many items because of a so-called 'seizure' he had sometime in June, 1975. He testified that he has been under medical treatment from 1974 continuously to date. However, the nature of his maladies were imprecise (overweight, etc.) and he presented no hospital records, doctors' reports or other supporting data.

NOTE OF PETITIONER: THESE RECORDS WERE PRESENTED TO THE COURT OF APPEALS.. M.Etewart.

"Prior history. The Respondent

is 63 years old and although he passed the Maryland Bar in 1940, he did not practice in Maryland until 1971. In 1965 while practicing in the District of Columbia, he pleaded guilty to a violation of Section 772 e (a) (1) of Title 15 of the U.S. Code, the essence of which is that he made certain representations regarding the same of stock which had not been registered with the Securities and Exchange Commission. He received a one to three year suspended sentence, was placed on probation for three years and was fined $5,000. The U.S. District Court for the District of Columbia determined that this was an offense involving moral turpitude and suspended him from the practice of law for three months (Com.Ex.G.l.s. and G.l.b.). As a result of that episode, the Respondent came to Baltimore and taught English at the University of Baltimore until 1971, when he commenced the practice of law here.

(NOTE: PETITIONER DISPUTES THAT MORAL TURPITUDE WAS INVOLVED. M.I. STEWART).

"CONCLUSIONS OF LAW

"From these findings of fact, we conclude as to Complaints A, B,C and E, that the Respondent violated the following Discipli-

nary Rules of Code of Professional Responsibility:

"1. DR6-101(A) (3), neglecting legal matters entrusted to him;

"2. DR6-101(A) (2), failure to carry out contracts of employment entered into with clients for professional services; and

"3. DR1-102, engaging in conduct that is prejudicial to the administration of justice.

"While Complaint D may technically amount to neglect, the matter involved was only a partial divorce, which was merely a holding action until the time had ripened into grounds for an absolute divorce. Therefore, no significant prejudice has been demonstrated to the panel.

"Complaint F fails for lack of proof.

"RECONNENDATION

REST OF OPINION OMITTED
DUPLICATION DIFFICULTIES.
(M.I.Stewart)